

New Jersey Commissioner of Education**Decision**

G.W. and K.W., on behalf of minor child, M.W.,

Petitioners,

v.

Board of Education of the Borough of Ringwood,
Passaic County,

Respondent.

Synopsis

In this case on remand – which stems from an appeal filed in September of 2020 – petitioners sought to overturn the Board’s determination that their child, M.W., was not the victim of harassment, intimidation, and bullying (HIB). The petitioners contended that their child had been subjected to HIB stemming from an assignment by his sixth-grade teacher. Following a long and complicated procedural history, which included the withdrawal of counsel representing petitioners, the Board filed a motion for summary decision in April 2024. In an Initial Decision issued June 27, 2024, the ALJ – finding, *inter alia*, that petitioners failed to file opposition papers – granted the Board’s motion for summary decision. Subsequently, the Commissioner rejected the Initial Decision and remanded the matter to the Office of Administrative Law (OAL) to be properly litigated, finding that, given the unique circumstances of the matter, petitioners had been unable to respond to the motion for summary decision and that the matter should therefore not have been considered unopposed. The Commissioner ordered that the petitioners be given a 20-day time limit on remand for filing opposition to the Board’s motion for summary decision.

On remand, the ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; petitioners did not submit any opposition papers within the 20 day time limit set by the Commissioner and did not request an extension of time to submit same; it is undisputed that G.W. and K.W. did not allow the District’s HIB investigators to interview M.W. about the alleged HIB; nothing in the record indicates that M.W. was adversely affected by the assignment that was the topic of the HIB complaint; nothing in the record indicates that any other student was adversely affected by the alleged HIB, nor was the orderly operation of the school; in fact, the record was entirely devoid of evidence supporting any of the elements of a charge of HIB. Accordingly, the ALJ granted the Board’s motion for summary decision.

Upon review, the Commissioner, *inter alia*, concurred with the findings and conclusions of the ALJ on remand. Accordingly, the October 4, 2024, Initial Decision was adopted as the final decision in this matter, and the petition of appeal was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

New Jersey Commissioner of Education

Final Decision

G.W. and K.W., on behalf of minor child, M.W.,

Petitioner,

v.

Board of Education of the Borough of Ringwood,
Passaic County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) on remand have been reviewed and considered. The parties did not file exceptions.

Petitioners filed an appeal of respondent's (Board) determination that their child, M.W., was not the victim of harassment, intimidation, and bullying (HIB). Petitioners were initially represented by counsel, who was subsequently permitted to withdraw. M.W.'s father, G.W., took over managing the case, but notified the OAL in February 2024 that M.W.'s mother, K.W., would be handling the case going forward.

In an Initial Decision issued June 27, 2024, the Administrative Law Judge (ALJ) granted the Board's second motion for summary decision. Specifically, the ALJ deemed the motion unopposed because petitioners had not filed opposition papers. The ALJ found that the record was devoid of evidence supporting any of the elements of a charge of HIB.¹ As such, the ALJ concluded that there

¹ The Board concedes that M.W. reasonably perceived that the alleged perpetrator's conduct was motivated by an actual or perceived distinguishing characteristic. The Board also concedes that the conduct occurred on school grounds. *Respondent's Brief in Support of Motion for Summary Decision*, p. 6.

were no unresolved issues of material fact that would necessitate a plenary hearing, and that the Board's HIB determination should be affirmed.

On September 6, 2024, the Commissioner rejected the Initial Decision, finding that given the unique circumstances of this matter, in which petitioner was no longer represented by counsel and lacked a copy of the complete case file, petitioner was unable to respond to the motion for summary decision. The Commissioner remanded this matter to the OAL to be properly litigated and directed the Office of Controversies and Disputes to provide a complete copy of the record to petitioner. Additionally, the Commissioner set a 20-day time limit for petitioners to file opposition to the Board's motion.

On remand, when petitioner failed to respond to the motion within 20 days, the ALJ considered the motion unopposed. The ALJ concluded that a required element of HIB – that the conduct substantially disrupt or interfere with the orderly operation of the school or the rights of other students – had not been established, thereby precluding a finding of HIB. The ALJ further concluded that there were no unresolved issues of material fact that would warrant a plenary hearing and granted the Board's motion for Summary Decision.

Upon review, the Commissioner concurs with the findings and conclusions of the ALJ on remand. Accordingly, the October 4, 2024, Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 19, 2024
Date of Mailing: December 20, 2024

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO.: EDU 12842-24

**G.W. AND K.W. ON BEHALF OF
MINOR CHILD M.W.,**

REMAND OF

OAL DKT. NO.: EDU 09628-20

Petitioners,

v.

**BOROUGH OF RINGWOOD,
BOARD OF EDUCATION,
PASSAIC COUNTY,**

Respondent.

K.R. formerly known as K.W., on behalf of M.W., petitioners, pro se

Jessika Kleen, Esq., for respondent (Machado Law Group, attorneys)

BEFORE: **JOHN P. SCOLLO**, ALJ:

Record Closed: September 30, 2024

Decided: October 4, 2024

STATEMENT OF THE CASE

Petitioners, G.W. and K.W., parents of M.W., filed for a Fair Hearing following the Ringwood Board of Education's (a/k/a the District) determination that HIB charges brought against Joan Bredin ("Bredin"), M.W.'s teacher, did not support a finding of HIB conduct. In the Motion at bar, the Respondent seeks Summary Decision ordering the dismissal of the Petitioner's appeal.

PROCEDURAL HISTORY

On or about December 6, 2019, Joan Bredin provided a reading assignment, a three-page story titled "An Engine Without Brakes" to M.W., then a sixth-grade special education student, who had been diagnosed as Attention Deficit Hyperactivity Disorder ("ADHD").

On December 13, 2019, G.W. and K.W. (a/k/a K.R.), M.W.'s parents, learned about the assignment and made an HIB complaint. Anti-Bullying Specialist, Eric R. Erler (the "Investigator") investigated the allegations of the complaint by interviewing Bredin and a paraprofessional (a teacher's aide) who worked in the same classroom with M.W. G.W. and K.W. did not give consent for their son, M.W., to be interviewed and so he was not interviewed. On January 8, 2020, Erler filed his HIB Investigation Narrative in which he concluded that the incident (i.e., the circumstances surrounding the assignment of the story to M.W. by Bredin) did not meet the criteria for HIB. On February 24, 2020, the Ringwood Board of Education voted to adopt the Investigator's conclusion. On May 14, 2020, counsel for G.W. and K.W. sent a letter in lieu of the appearance of G.W. and K.W. in furtherance of their appeal of the District's determination. On May 27, 2020, the HIB/Discipline Appeal Committee met. On June 1, 2020, the Board of Education voted to take no further action, thus affirming its February 24, 2020 decision to adopt the Investigator's conclusion that the criteria for HIB had not been met. On September 14, 2020, G.W. and K.W. filed a Petition of Appeal from the Board of Education's June 1, 2020 Decision with the Commissioner of Education. On September 21, 2020, the Board

of Education filed its Answer to the Appeal. A hearing was scheduled for April 28 and 30, 2021. In March, 2021 the two sides filed their respective motions for summary decision. Settlement discussions ensued without resolution of the matter. Subsequently, Opposition papers, Replies, and various supporting papers were submitted. On December 16, 2021 both motions were denied. On June 7, 2022 the Honorable JoAnn Candido, ALJ entered an Order granting the motion of Robert Thurston, Esq. to be relieved as counsel for Petitioners. Subsequently, in light of related civil litigation pending in Federal District Court, the matter was held in abeyance. In September, 2023 counsel for Respondent inquired of Judge Scollo about the status of this matter and whether this matter would be given a trial date. In response, Judge Scollo requested a status report from the parties regarding the state of the related civil litigation. On February 22, 2024, Respondent's counsel supplied a status report and requested leave to file a Motion to Dismiss EDU 09628-20. Judge Scollo denied leave to file a Motion to Dismiss but granted leave for Respondent to file a Motion for Summary Decision. Counsel for Respondent filed a Motion for Summary Decision on April 30, 2024 chiefly citing as its bases the failure of the Petitioners to set forth evidence that the student (M.W.) was harmed, or that the alleged incident substantially disrupted or interfered with the orderly operation of the school or the rights of the allegedly targeted student or of other students.

On April 8, 2024, the Tribunal sent correspondence to both sides granting leave to the Respondent, Ringwood BOE to file a Motion for Summary Decision and stating that UAPR 1:1-12.5 required the party opposing a Motion for Summary Decision to submit Opposition papers within twenty (20) days. As noted above, Respondent Ringwood BOE filed its motion for summary decision on April 30, 2024. Therefore, Petitioners' Opposition papers were due on May 20, 2024. On June 10, 2024, K.R. (the mother of M.W. and formerly known as "K.W.") inquired with Judge Scollo's secretary, Diana Batista, about how to obtain papers from her file. K.R. claimed that she did not have a copy of Ringwood BOE's Summary Decision Motion; that she did not have her case filings; and that she wanted leave from the Tribunal to allow her fourteen (14) days from the date of her receipt of the Motion to file Opposition papers. Ms. Batista directed K.R. to contact the Department of Education for copies of her papers. On June 10, 2024, Attorney Kleen (counsel for the Ringwood BOE) sent emails enclosing proof that she

served the Motion for Summary Decision upon the petitioners on April 30, 2024, including a copy of the envelope in which the Motion was contained. On June 14, 2024, in response to K.R.'s June 10, 2024 correspondence, Judge Scollo wrote to the parties stating that the Petitioners had prior legal counsel who should have given the file to the Petitioners when his representation of the Petitioners concluded and from whom a copy of the file should be obtainable. Referencing his April 8, 2024 letter, Judge Scollo noted that the Opposition papers were due on May 20th and were now twenty-five (25) days overdue. Nonetheless, Judge Scollo granted the Petitioners until Thursday, June 20, 2024 at 12:30 p.m. to submit their Opposition papers. The Petitioners did not submit their Opposition papers by the 12:30 p.m. deadline on Thursday, June 20, 2024 and said Opposition papers were not submitted by the Tribunal's close of business at 4:30 p.m. on June 20, 2024. Therefore, the Motion was deemed to be unopposed.

The Acting Commissioner of Education issued his Final Decision on September 6, 2024 (mailed on September 9, 2024); in that Decision the Acting Commissioner set a twenty-day time limit for the Petitioners to submit their Opposition to the Respondent's Summary Decision Motion. The Petitioners did not submit any Opposition papers by Monday, September 30, 2024 and the Petitioners did not ask the Tribunal for additional time to submit same. The Record closed on September 30, 2024.

ANALYSIS OF LEGAL AND FACTUAL ISSUES

Analysis of the Parties' Respective Positions

The Petitioners' claim has been that the assigning of the story to M.W. was inherently outrageous and the evidence of its outrageous nature is so one-sided that the only possible conclusion is that it constitutes bullying. Therefore, argue the Petitioners, the School District's determination that Ms. Bredin's action was not an act of HIB (bullying) is erroneous. The Tribunal notes that Petitioners' accusation is not rooted in established facts.

The Ringwood BOE's position is that the investigation team found that Ms. Bredin's rationale for assigning the story to M.W. was free from any kind of improper motive and,

applying all HIB criteria, concluded that Ms. Bredin's actions did not constitute an act of HIB. The BOE maintains that the HIB investigation and the conclusion reached by the Anti-Bullying Specialist and the subsequent February 24, 2020 BOE vote adopting the conclusion of the Anti-Bullying Specialist were conducted in accordance with the procedures set forth in N.J.S.A. 18A:37-14, commonly referred to as "The Anti-Bullying Bill of Rights Act" and were therefore conducted properly. The Ringwood BOE's Motion is supported by Certifications and attachments.

Findings of Undisputed Facts

Ringwood BOE's Motion for Summary Decision was filed on April 30, 2024. Under UAPR 1:1-12.5 a party has twenty days to file Opposition papers to his adversary's Motion for Summary Decision. I **FIND** that the Motion for Summary Decision was duly served by the Machado Law Firm upon the Petitioners as evidenced by Attorney Kleen's statement and by her submission of a copy of the envelope bearing the postmark of April 30, 2024. I **FIND** that the Petitioners did not file Opposition papers within the twenty-day period allowed for the filing of Opposition papers under UAPR 1:1-12.5. Although the Tribunal granted the Petitioners additional time (to Thursday, June 20, 2024 by 12:30 p.m.) to submit their Opposition papers, I **FIND** that no such papers were received by the Tribunal by 12:30 p.m. or even by the close of business at 4:30 p.m. on June 20, 2024.

The Acting Commissioner of Education issued his Final Decision on September 6, 2024 (mailed on September 9, 2024); in that Decision the Acting Commissioner remanded the matter and set a twenty-day time limit for the Petitioners to submit their Opposition to the Respondent's Summary Decision Motion. The Petitioners did not submit any Opposition papers by Monday, September 30, 2024 and the Petitioners did not ask the Tribunal for additional time to submit same. I **FIND** that the time limit set by the Assistant Commissioner has been exceeded.

It is undisputed and I **FIND** that G.W. and K.W. did not allow the HIB investigators to interview M.W. I **FIND** that had M.W. been interviewed by the HIB investigators, the investigators, the parents and this Tribunal would likely have obtained essential factual evidence regarding whether M.W. reasonably perceived that Ms. Bredin's assigning of

the article to him was motivated by an actual or perceived characteristic or by a distinguishing characteristic of M.W. I **FIND** that had the HIB investigators been allowed to interview M.W., it would have enabled the investigators to explore whether or not M.W. was adversely affected by the assignment of the article, whether the assignment substantially disrupted or interfered with the orderly operation of the school, and whether the assignment adversely affected the rights of other students. I **FIND** that the parties were afforded sufficient time to conduct discovery. I **FIND** that there was nothing in the record that indicates that M.W. was adversely affected by the assignment of the article.

I **FIND** that there was nothing in the record that indicates that any other student was adversely affected by Bredin's assignment of the article to M.W. I **FIND** that there is nothing in the record that indicates that the orderly operation of the school was adversely affected by Bredin's assignment of the article to M.W.

APPLICABLE LAW

The Standard for Summary Decision

A Motion for Summary Decision may be granted if the papers and discovery presented, as well as, any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the Motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c). See Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954) and Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995).

The HIB Statute

N.J.S.A. 18A:37-14 defines "Harassment, intimidation or bullying" as, Any gesture, any written, verbal or physical act, or any electronic Communication, whether it be a single

incident or a series of incidents, that is:

[1] reasonably perceived as being motivated either by any actual or perceived characteristic such as race, color, religion, ancestry, national origin, gender sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic,

[2] that takes place on school property, at any school-sponsored function, on a school bus, or takes place off school grounds as provided for in N.J.S.A. 18A:37-15.3,

[3] that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

- a. A reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging a student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property; or
- b. Has the effect of insulting or demeaning any student or group of students; or
- c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student."

Thus, to constitute HIB the gesture or action must contain all three primary (i.e., numerically-listed) elements plus at least one of the three alphabetized ("a", "b" or "c") elements.

Board of Education's HIB Decisions Are Afforded a Presumption of Validity

The decision of a local board of education should not be disturbed absent a finding that the action below was arbitrary, capricious, or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008), (citing Thomas Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), *aff'd*, 46 N.J. 581 (1966)). In an appeal of a District's finding, with respect to an HIB investigation, the burden of proving "unreasonableness" of Board action is on Petitioners. G.M. v. Roselle Park Borough Bd. of Educ., 95 N.J.A.R.2d (EDU) 107, 109. Courts have held that "[w]here

there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Bayshore Sewage Co. v. Dep’t of Env’tl. Prot., 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), *aff’d*, 131 N.J. Super. 37 (App. Div. 1974). “Thus in order to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.” T.B.M., see also, W.C.L. and A.L. ex rel L.L. v. Tenaflly Bd. of Educ., OAL Dkt. No. EDU 3223-12 (2013).

Motion Practice Before the Tribunal

Under the OAL’s Uniform Administrative Procedure Rules (UAPR), a party wishing to oppose his adversary’s Motion for Summary Decision must file written Opposition papers within twenty days of the filing of the Motion. UAPR 1:1-12.5.

LEGAL ANALYSIS AND CONCLUSIONS

Having found that the time limit set by the Acting Commissioner for Petitioners to submit their Opposition papers has been exceeded, I **CONCLUDE** that the Respondent’s Motion is unopposed.

I **CONCLUDE** that the Petitioners have failed to raise any unresolved issues of material fact that would necessitate a plenary hearing.

I **CONCLUDE** that the Petitioners have failed to carry their burden of demonstrating that the decision of the BOE in regard to the HIB charges against Ms. Bredin was tainted by bad faith or that the decision of the BOE was made in utter disregard of the circumstances before it.

Having found that there is nothing in the record that would indicate that the assigning of the article to M.W. adversely affected M.W. or another student and that the assigning of the article to M.W. adversely affected the operation of the school, I **CONCLUDE** that an essential element of HIB (the third element of the primary, or numerically-listed elements) has not been established and I **CONCLUDE** that without said

element there can be not finding of an act of HIB. I therefore **CONCLUDE** that the Ringwood BOE's determination that Ms. Bredin did not commit an act of HIB must be and hereby is **AFFIRMED**.

For all of the above reasons, I **CONCLUDE** that Respondent Ringwood BOE's Motion for Summary decision should be and hereby is **GRANTED**.

ORDER

This matter having been brought before the Tribunal by counsel for the Respondent Ringwood BOE seeking Summary Decision, and the Tribunal having considered the submissions, and for good cause:

It is on this third (4th) day of October, 2024,

ORDERED that the Respondent Ringwood BOE's Motion for Summary Decision is hereby **GRANTED**; and it is further

ORDERED that the Tribunal's Order Granting Summary Decision in favor of the Ringwood BOE shall be immediately sent to the parties and / or their counsel by email; and it is further

ORDERED that both sides shall immediately acknowledge receipt of this **ORDER** by email.

I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.



October 4, 2024

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

LIST OF MOVING PAPERS

Respondent Ringwood BOE's Motion for Summary Decision